

Child Protection Cases: Mediator's Guide to Handling Domestic Violence in Mediation

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This document is a work-in-progress. Consult the Office of Dispute Resolution for updated versions.

When Mediation Is Proceeding with Known DV Issues

- Due to the presumption against mediation cases involving domestic violence when the perpetrator is a necessary participant in mediation, most of these cases will not be mediated (Please refer to the Essential Considerations for PPMP* Domestic Violence Protocols document and your center's local Domestic Violence Protocol). [See Appendix F for the Essential Considerations.]
- If a case will proceed to mediation despite the presence of DV and the necessary participation of the perpetrator, the mediator(s) will be briefed by the intake worker about any necessary precautions that will need to be taken, such as separate sessions with the mediator, etc. (see protocols).
- Prior to opening the mediation with all participants, the mediator(s) should meet with all the "professionals" in the case and confirm any safety arrangements being made and to ask that they not reveal any sensitive information (such as agency reports, current addresses, etc.) in the presence of the batterer if they could put the survivor at risk.
- The mediator(s) should watch for any signs of intimidation of the survivor throughout the session and if such signs are detected, the mediator(s) should call a caucus with the survivor, her attorney, and her support persons to assess what is happening (even if the batterer is not present).
- The survivor should be told prior to mediation (by the intake worker) that if she becomes uncomfortable and wants to terminate the mediation for any reason, she should whisper this to her attorney and her attorney should request a recess to confer with his client. The attorney would have to be briefed about this ahead of time.
- The mediator should always take responsibility for stopping a mediation. The survivor could be at risk of harm if the batterer knew it was her idea. The mediator could say something like, "It seems that the parties are very far apart in what they think should happen with this case and it will not be helpful to continue this session."
- If necessary, the mediator should feel free to do whatever is appropriate to keep the situation safe, including the summoning of law enforcement.

* "PPMP" and "PPMP Centers" refer to permanency planning mediation programs that serve in child protection cases. See Section 6.5 for discussion of some important differences between mediation in child protection and domestic relations cases.

When the Mediator Detects Signs of Intimidation During Mediation (Where no Domestic Violence previously detected).

- If the mediator(s) senses that a party is being intimidated during mediation, he/she should call a caucus with that party and his/her attorney to assess what is happening and whether the mediation should continue.
- If appropriate, the mediator(s) might also caucus with other appropriate professionals in the room to assess what is happening and if referrals should be made.
- If necessary, the mediator should always take responsibility for stopping a mediation. The alleged victim could be at risk of harm if the batterer knew it was her idea. The mediator could say something like, "It seems that the parties are very far apart in what they think should happen with this case and it will not be helpful to continue this session."
- If necessary, the mediator should feel free to do whatever is appropriate to keep the situation safe, including the summoning of law enforcement.